



# **In the Supreme Court of the United States.**

OCTOBER TERM, 1897.

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ROBERT DUNLAP, APPELLANT, }  
v. } No. 547.  
THE UNITED STATES. }

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## **MOTION TO ADVANCE.**

Now come counsel for the parties to the above-entitled cause and move the court to advance the same upon the docket and set it down for hearing at the present term, for the following reasons :

(1) This case is one of a large class involving the construction of section 61 of the act of August 28, 1894, which provides as follows :

Any manufacturer finding it necessary to use alcohol in the arts, or in any medicinal or other like compound, may use the same under regulations to be prescribed by the Secretary of the Treasury, and on satisfying the collector of internal revenue for the district wherein he resides or carries on business that he has complied with such regulations and has used such alcohol therein, and exhibiting and delivering up the stamps which show that a tax has

been paid thereon, shall be entitled to receive from the Treasury of the United States a rebate or repayment of the tax so paid.

The question which was before the Court of Claims in the case just decided was whether regulations prescribed by the Secretary of the Treasury were an absolute prerequisite to any claim for rebate arising on the part of the manufacturer, and the Court of Claims has decided that they were.

(2) In the report for 1896 of the Assistant Attorney-General in charge of business in the Court of Claims the following statement is made on this point (Rept. Attorney-General 1896, p. 9):

These suits, described more fully in my report of November 1, 1895, have now reached 1,090 in number, representing claims not far from \$5,000,000, and are increasing in number weekly.

In view of the very large amount involved in these claims, the public interest demands that there should be an early decision, so that it may be known whether these form an existing obligation of the Treasury.

In view also of the large number of business firms and corporations in all parts of the country interested as parties claimant in cases depending upon this claim, they may properly ask that the case should be preferred in hearing to the many other cases before the Supreme Court involving merely individual interests.

The delay of two years in the hearing of the case, which would follow if not advanced, would result in injustice both to the Treasury and the large class of individual claimants who are concerned.

(3) If the decision of the Court of Claims should be sustained, it is highly important to the Government that that decision should be promptly rendered. The dockets of the Court of Claims can then be relieved of the large number of cases now upon them under this law and the Attorney-General will be able to make final disposition of them and be relieved of further responsibility in regard to them.

(4) If the decision of the Court of Claims should be overruled, then a special reason exists why expedition is of the utmost importance. The successful defense of these claims and the discrimination between claims well founded in fact and those without substantial justice will depend upon the ability of the Government, when a detailed investigation takes place, to secure oral testimony for the explanation of the books of the claimants. The papers and records of the claimants will establish their claims, and can easily be preserved, but defenses based upon an effort to show that the alcohol was not used for the purposes defined in the law must depend upon securing the testimony of witnesses who, between 1894 and 1896, were cognizant of the conditions of the origin of the claims. Time is one of the most important means for the destruction of oral evidence. With each year's delay the witnesses' memories grow less distinct and the possibilities of death and removal to parts unknown increase. The investigation of the claims in detail, if the Supreme Court should decide in their favor, will necessarily consume a considerable time. It is of the utmost importance that the point of beginning of such an investigation should be as near as possible to the inception of the

claims. If the case is now advanced, two years' time would probably be saved and the Government placed in a position where the defense of individual cases could be conducted with more certainty than if this time should be allowed unnecessarily to elapse through delay which might now be avoided.

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